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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SCOTT WESLEY HUMPHREYS,

11 Plaintiff,

12 v.

13 LUKE BURGHER ET AL.,

14 Defendants.

No. 3:18-cv-05736-RJB-JRC

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

15 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.
16 Richard Creatura (Dkt. 57), objections to the Report and Recommendation (Dkt. 58), and the
17 remaining record, does hereby find and ORDER:

- 18 (1) The Court adopts the Report and Recommendation.
- 19 (2) Defendants' Motion to Dismiss (Dkt. 44) (Dkt. 23) is granted in part and denied
20 in part as stated in the Report and Recommendation.
- 21 (3) Plaintiff is granted leave to amend his Complaint with respect to plaintiff's claims
22 against: (1) defendant Burgher for sexual harassment; (2) defendant Bennett for
23 sexual harassment and violations of plaintiff's right to access to the courts and
24 equal protection; (3) defendant Lystad for violations of the Eighth Amendment
25 related to plaintiff's medical treatment; (4) defendant Jolly for due process
26 violations; (5) defendant Sharpe for violations of access to the courts; (6)
defendants Cardwell, Casey, Gilbert, Haynes, Jones, Burgher, and Tornquist for
failure to protect; (7) defendant Haynes and Gilbert for supervisory liability; and
(8) defendants Thrasher, Cotton, Corder, and Walden for any constitutional
violations cognizable under § 1983.

- 1 (4) Plaintiff filed an Amended Complaint (Fourth Amended Complaint) (Dkt. 59) on
2 August 26, 2019, apparently in response to the Report and Recommendation.
3 Docket Number 59 is now the operative Complaint, and hopefully, the final
4 Amended Complaint in this matter.
- 5 (5) In regard to defendants Objections:
6 (a) First, all concerned are tired of plaintiff's ongoing attempts to state claims.
7 However, Magistrate Judge Creatura's ongoing efforts to apply the law to the
8 plaintiff's Complaints, and to recommend authorizing Amendments, and this
9 Court's approval of those efforts is well within judicial discretion;
10 (b) It is difficult, and likely unfair, to determine matters of qualified immunity
11 before the claims are settled. Hopefully, on referral, the Magistrate Judge will
12 address those matters so far as it is proper to do so.
13 (c) The other legal issues raised in defendant's objections should be further
14 considered by the Magistrate Judge as part of the review of the adequacy of the
15 Fourth Amended Complaint.
- 16 (6) This matter is re-referred to Magistrate Judge Creatura.
- 17 (7) The Clerk is directed to send copies of this Order to Plaintiff, counsel for
18 Defendants, and to the Hon. J. Richard Creatura.

19 **DATED** this 16th day of September, 2019.

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ROBERT J. BRYAN
United States District Judge